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Human rights of migrants

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of migrants, Mr. François Crépeau, in accordance with General Assembly resolution 70/147.

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Report of the Special Rapporteur on the human rights of migrants

Summary

The present report outlines the main activities undertaken by the Special Rapporteur of the Human Rights Council on the human rights of migrants during the reporting period since his most recent report to the General Assembly.

The thematic section of the report outlines proposals for the development of the global compact on migration, with a view, in particular, to ensuring that human rights are effectively included and mainstreamed therein. The report underlines the importance of taking a long-term strategic approach to developing the global compact for accessible, regular, safe and affordable mobility policies and practices that will place States in a better position to respond to the significant demographic, economic, social, political and cultural challenges that lie ahead.

I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur of the Human Rights Council on the human rights of migrants, François Crépeau, pursuant to its resolution 70/147.

II. Activities

2. The Special Rapporteur was consulted by the Special Adviser of the Secretary-General on the summit on addressing large movements of refugees and migrants and provided oral and written input towards the development of her report addressing the issue of large movements of refugees and migrants.

3. The Special Rapporteur also participated and contributed to a number of international and regional dialogues and conferences, including the Department of Economic and Social Affairs coordination meeting on international migration and the consultation on the Migrants in Countries in Crisis Initiative organized by the International Organization for Migration (IOM).

4. Due to the continuing arrival of unprecedented numbers of irregular migrants at the external borders of the member States of the European Union, the Special Rapporteur has remained focused on the issue (see A/HRC/29/36). The Special Rapporteur provided suggestions for key European Union policy documents such as the European Migration Agenda and the European Parliament's Committee on Civil Liberties, Justice and Home Affairs report on the situation in the Mediterranean and the need for a holistic European Union approach to migration. He also briefed the Italian Interministerial Committee on Human Rights and provided a briefing to the European Parliament Subcommittee on Human Rights.

5. The Special Rapporteur's planned visit to Australia in October 2015 was postponed to November 2016. He has reiterated his request to visit Nauru and Papua New Guinea and looks forward to receiving a response and confirmation of the dates for a visit in November 2016.

6. The Special Rapporteur visited Angola and Greece in May 2016. His related reports will be submitted to the Human Rights Council at its thirty-fifth session.

7. The Special Rapporteur submitted his report on the impact of bilateral and multilateral trade agreements on the human rights of migrants to the Human Rights Council at its thirty-second session (A/HRC/32/40).

III. The global compact for safe, regular and orderly mobility

A. Background

8. There are approximately 244 million migrants worldwide today — an increase of 41 per cent (71 million) since 2000. Most migrants originate from middle-income countries, with 59 per cent settling in developed regions, where they make up some 11 per cent of the population. Between 2000 and 2015, Asia received 1.7 million

migrants per year, more than any other geographical region in the world,[1] and is on track to overtake Europe as the area hosting the largest number of migrants in the near future. Women make up 48 per cent of all international migrants. In Europe and North America, the majority of migrants are female, while in Africa and Western Asia, the majority of migrants are male. Approximately 15 per cent of all international migrants are younger than 19 years of age.

9. Ageing populations have caused a shift in demographics that has led to labour shortages. In 2010, for the first time, more workers were retiring from the European labour market than joining it. By 2030, if trends continue, the labour shortage in Europe is likely to rise to 8.3 million workers. At the same time, many member States of the European Union have fertility rates below the rate of replacement. Similarly, by 2020, large economies such as Canada, China, the Republic of Korea and the Russian Federation will also face labour shortages.

10. These demographic shifts will add pressure and impetus to the need to balance labour supply and demand. Currently, 72 per cent of migrants are of working age, a factor that could contribute to bridging the gap in "ageing economies". To meet employment targets, States could harness the capacity of these migrants by employing a complex migration policy mix and reconsidering how they utilize their skills (see A/70/59). Employers could embrace diversity and rely on recruitment from a global labour force, as migrants with all kinds of skills will be required for many sectors of the economy.

11. Many migrants move voluntarily in a safe and regular manner and live and work in conditions in which their labour and human rights are respected. In some circumstances, families are reunified. Others are forced to migrate as a result of push factors, including poverty, discrimination, violence, conflict, political upheaval and poor governance, and pull factors, including official or unacknowledged labour needs, as explained above, or for family reunification. Children are disproportionately represented among those forcibly displaced. In the context of natural disasters and climate change, migration is increasingly seen as an adaptation measure ensuring resilience through planned mobility. In the process of migration, many face exploitation, discrimination, abuse and other human rights violations.

12. Putting up a barrier between push and pull factors to prevent mobility without responding to the need to leave and the need for workers creates conditions for the creation of a flourishing underground labour market. Any attempt at "sealing" borders without offering more accessible, regular, safe and affordable avenues for migration will continue to fail on a massive scale.

13. It is paradoxical that, in the name of securing their borders, some States have actually lost control of them owing to the fact that flexible and opportunistic smuggling rings are often ahead of the game. Prohibitive and repressive policies, without regular migration channels for asylum seekers and much-needed low-wage migrants, only entrench smuggling operations and underground labour markets, resulting in more deaths at sea and more human rights violations.

14. The militarization of border control, which includes "push-backs" at land and sea, creates unnecessary suffering and violations of human rights and humanitarian law at borders: the vast majority of migrants are innocuous. "Fighting the

[1] Department of Economic and Social Affairs, Population Division, International migrant stock 2015 (see www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml).

smugglers" will remain futile as long as persons in need of mobility, without other options, may avail themselves of the irregular mobility solutions offered by opportunistic smuggling rings. The present escalation in repressive measures does not bode well for migrants: it will push them further underground, into the hands of unscrupulous lenders, recruiters, smugglers, employers and landlords.

15. The only way to effectively reduce smuggling is to offer more accessible, regular, safe and affordable mobility solutions, with all the identity and security checks that efficient visa procedures can provide.

16. States' responses to migration and, more recently, to what is now being termed "the migration crisis" have been ad hoc, short-sighted and inadequate and have led to friction among States, creating an atmosphere of chaos and disorganization that instils fear in the hearts of the citizens of destination countries and feeds all the stereotypes, myths, threats and fantasies that nationalist populist movements exploit with great success.

17. The Special Rapporteur would like to stress that, as a percentage of the world population, the number of migrants remains low. Migrants were only 3.3 per cent of the global population in 2015, compared with 2.8 per cent in 2000. In addition, the rate of migration actually slowed in the period from 2010 to 2015, compared with the previous five-year period. Consequently, despite common perceptions, it is not accurate to designate migration as a "crisis".

18. Unregulated migration in host countries has led to rising anti-migration sentiment, discrimination and violence, as migrants are portrayed as "stealing" jobs and draining social services. Against the backdrop of a poor economic climate, the rise in nationalist populist parties and the tragic terrorist attacks around the world, xenophobia and hate speech have increased, causing a significant upward trend in negative perceptions of migrants and creating a stumbling block in the development of more efficient evidence-based and human rights-based policies.

19. Notwithstanding such negative perceptions, immigration has a minimal impact on unemployment among residents in host countries and a positive overall impact on employment generation and investment: migrants contribute to economic growth wherever they go.[2] Increasing evidence suggests that migrants, including irregular migrants, contribute more in direct and indirect taxes than they receive in the way of services.[3] The use of the appropriate language and studies, the presentation of facts and policies that favour diversity and the inclusion of migrants are key to facilitating their integration and contribution to development and to reducing negative populist representations of migrants.

20. The continued ineffectiveness and paradoxes of border management and the lack of a coherent, human rights-based framework for migration have been vividly and visibly demonstrated by the tragic deaths of migrants in transit, propelling the issue of the human rights of migrants into the spotlight. Although less frequently discussed, suffering is experienced at all other stages of migration.

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[2] Organization for Economic Cooperation and Development, *International Migration Outlook 2013* (Paris, OECD, 2013).

[3] Office of the United Nations High Commissioner for Human Rights (OHCHR), "The economic, social and cultural rights of migrants in an irregular situation", 2014, p. 99. Available from: www.ohchr.org/Documents/Publications/HR-PUB-14-1_en.pdf.

21. The Special Rapporteur proposes a fundamental shift in the way that migration is perceived and framed. Migration itself is a natural part of human existence; it is not a crime, it is not a problem, and it has the potential to be a solution. According to this conception, migration governance is not about closing off borders and keeping people out, but about regulating mobility, that is, opening accessible, regular, safe and affordable migration channels and promoting and celebrating diversity. By governing migration instead of restricting it through the use of "push-backs", interception and detention, we move from a zero-tolerance attitude to one of harm reduction, thereby undercutting the criminal organizations responsible for migrant smuggling, addressing the security concerns of States and, ultimately, reducing human suffering and saving lives.

22. Effectively regulating mobility requires States to develop a much more complex view of why and how people move. States must adopt a whole-system view of migration, taking into account all its aspects, including all benefits and challenges in terms of economic growth, demographic changes, cultural diversity, social integration, personal freedom and respect for the rule of law. A whole-of-government approach is best.

23. States must also develop a long-term strategic vision of how they want their mobility policies and practices to be, 10 to 30 years from now. Preparing such a strategic vision with appropriate consultations in an inclusive and robust public debate, with full recognition of their human rights obligations and respect for the rule of law for all, will allow States to determine the steps needed to achieve their goals, as well as with realistic timelines and the kind of public discourse needed to convince their electorates. Such a vision will only be legitimate if it is placed within a human rights-based framework that will empower all concerned, including all migrants, to test the legality of mobility policies and practices.

24. Taking such a long-term strategic approach in developing the global compact for accessible, regular, safe and affordable mobility policies and practices will place States in a better position to respond to the significant demographic, economic, social, political and cultural challenges that lie ahead.

B. Developing the global compact for safe, regular and orderly mobility

25. All the human rights concerns discussed above are signs of stress within global border management and migration systems. They are clear indications that the status quo is simply not sustainable. Ignoring these warning signs and pouring further resources into ineffective and paradoxical closure systems will lead to further human suffering, as well as wasted resources and lost opportunities, owing to a failure to take advantage of the rewards to be gained from regulated mobility.

26. The Special Rapporteur prefers the use of the term "mobility" over that of "migration". "Migration" has come to embody all the fears of uninformed public opinion. "Mobility" is a more fluid term, usually associated with highly skilled workers: expatriates are "mobile", construction workers are "migrants". Language matters, and changing language is part of changing perceptions. Using the expression "mobility" better encompasses the idea of allowing people to come and go and return, depending on their labour opportunities and personal choices. It may or may not mean settlement or integration.

27. The Special Rapporteur supports the Secretary-General's call to "undertake a State-led process to elaborate a comprehensive international cooperation framework on migrants and human mobility, in the form of a global compact for safe, regular and orderly migration, and to hold an intergovernmental conference on international migration in 2018 to adopt the global compact" (A/70/59).

28. As a response to the proposals made in the above-mentioned report on a global compact, the Special Rapporteur makes the following recommendations, structured in line with the Secretary-General's report, for the development of the global compact, in particular with a view to ensuring that human rights are included and mainstreamed therein.

1. Developing a human rights-based framework that will ensure that the global compact for safe, regular and orderly migration is based on the recognition that all migrants, regardless of their status, must receive the protection, respect and fulfilment of their human rights

29. States assume obligations under international law to respect, protect and fulfil human rights. These obligations are also broadly echoed by the national human rights standards and regional instruments, which apply to all, regardless of nationality or administrative status.

30. A human rights-based framework for migration would ensure the application of these obligations to migrants to protect them from abuse. It is a framework based on the principles of equality and non-discrimination and the duty of States to respect, protect and fulfil human rights, which includes the right to access justice. States must acknowledge that human rights are for all and that migrants should be treated as equal rights holders, regardless of their migratory status in relation to the sovereign territory they find themselves in. When migrants are viewed as equal rights holders, a duty to protect them at all stages of the migration process naturally follows. If violations of these rights occur at any point, migrants need to be provided with access to justice to remedy any discriminatory treatment.

31. The view and labelling of migrants among many stakeholders as "illegal" is counterproductive and is not supported by international law. While migrants who arrive in countries of destination without documents may be in an "irregular situation" or "undocumented" or "unauthorized", they have not committed a criminal act. A human being cannot be intrinsically illegal, and naming anyone as such dehumanizes that person. The conceptualization of irregular migrants as "illegal" has undoubtedly played into the criminalization of migrants and thus to the practice of immigration detention. It has also had an impact on the general public's perception of migrants, legitimizing policies that are not in line with human rights guarantees and contributing to xenophobia, discrimination and violence.

32. The common conception that migrants are "job stealers" is also a harmful stereotype. Economic research demonstrates how migrants complement rather than compete with citizens, generating greater overall productivity within the economy.[4]

[4] David Card, "The impact of the Mariel boatlift on the Miami labor market", *Industrial and Labor Relations Review*, vol. 43, No. 2 (January 1990), pp. 245-257; Mette Foged and Giovanni Peri, "Immigrants' effect on native workers: new analysis on longitudinal data", Institute for the Study of Labour discussion paper, No. 8961, 2015; Andri Chassamboulli and Giovanni Peri, "The labor market effects of reducing the number of illegal immigrants", *Review of Economic Dynamics*, vol. 18, No. 4 (October 2015).

A study[5] undertaken over a period of 14 years into the effects of non-European Union migration on 15 Western European countries showed that, by taking manual jobs, migrants pushed European Union nationals towards more highly skilled and better-paid jobs. A significant increase in more complex skills among nationals was noted. The labour market adjusted with no significant impact on the employment rates for European Union nationals. The impact of the global recession was shown to temper but not eradicate this positive phenomenon, debunking the argument that an economic downturn justifies repressive policies against migrants.

33. Similarly, conceptions of migrants as a "burden" are not based on facts and serve political objectives. Against a backdrop of fiscal and demographic challenges and of austerity policies, discussing external migration as a "burden" and focusing on the need to share this "burden" across different Member States again legitimizes the further securing of borders and encourages negative public attitudes. Economic studies demonstrate that, as workers, consumers and taxpayers, migrants contribute to the economic growth of societies, with very limited downside effects (see A/HRC/29/36). In fact, the perceived "burden" of migration comes predominantly from the financial, technological and human resources necessary to implement counterproductive national security-focused policies and to deal with their unintended, although foreseeable, secondary effects.

34. Acknowledging that migrants are human beings with rights, States should be talking about sharing a "responsibility", not a "burden", and considering the costs for welcoming refugees and migrants as an investment, not an expense. All studies show that the return on the investment is well worth it.

35. A global compact based on the core principles and provisions of international and regional law could stop the widespread suffering of migrants in transit, at borders and in destination countries. Applying the United Nations core values to policies based on fact rather than fiction would lead to migration policies that facilitate mobility and promote diversity. The development of a global compact with a long-term vision supporting a human rights-based framework will become increasingly vital to the internal and external interests of States as they face demographic, societal and labour market challenges. Committing to a global compact that recognizes the benefits of mobility will provide better protection for the human rights of migrants and will better equip States to sustain recovery, encourage growth and further develop global competitiveness.

36. Fully implementing a global compact relying on a human rights-based framework for regular migration therefore involves a number of policy orientations, including:

(a) Increasing search-and-rescue capacity;

(b) Developing rights-based alternatives to detention and expeditiously and completely ending the immigration detention of children and families;

(c) Considerably reducing underground labour markets and exploitation in the workplace over the coming decade, as they act as a magnet for irregular migration at the request of exploitative employers;

[5] Francesco D'Amuri and Giovanni Peri, "Immigration, jobs and employment protection: evidence from Europe before and during the Great Recession", Bank of Italy working paper, No. 886 (University of California, Davis, 2012).

(d) Facilitating unionization for all migrant workers regardless of their status, effective access to justice for all migrants and respect of the rule of law for all, including migrants;

(e) Implementing "firewalls" between immigration enforcement and public services such as police services, health care and education for all migrants, regardless of their status;

(f) Reinforcing labour inspection mechanisms to enforce the rights of all workers, including migrant workers, whatever their status;

(g) Creating multiple labour migration opportunities, including for low-skilled migrants, to incentivize migrants to use regular migration channels, through visa and work permit regimes.

37. Smugglers and exploitative employers are currently facilitating the labour mobility that many labour markets need in order to thrive. Through creative visa opportunities for work at all skill levels, including for low-wage migrants, States could considerably reduce the number of migrants arriving through irregular means or overstaying their visas or permits. Coupled with entry and exit controls and other supporting initiatives, multi-year and multi-entry visas could incentivize migrants to come to countries of destination for work and return to the country of origin while respecting visa conditions. Encouraging mobility, including for employment, family reunification and education, will reduce irregularity.

38. The successful implementation of such a policy mix requires challenging the many intersecting and negative perceptions of migrants and migration that have pervaded public debates, policies and politics. The overreliance on securitization rests on the assumption that sealing international borders is possible, when the unsustainable status quo shows that it is not. Developing the global compact will require continued political commitment and creative policy developments.

2. Building on existing bilateral, regional and global cooperation mechanisms

39. Migration governance has become increasingly informal, ad hoc, non-binding and State-led, largely falling outside the United Nations framework in forums such as the Global Forum on Migration and Development and regional consultative processes. This leads to a lack of accountability, monitoring and oversight and the absence of a relationship with the formal normative monitoring mechanisms established within the United Nations.

40. Although such informal forums serve the purpose of initiating and sustaining conversations on migration issues between States, there is also a need to enhance the human rights dimension of global migration governance, including in terms of accountability, and to bring it into the United Nations framework, including by establishing an institutional framework on migration based within the Organization.

41. There has been considerable recognition of and interest in the issue of migration governance over the past decade. The two High-level Dialogues on International Migration and Development, with a third to be held by 2019, the thriving Global Forum on Migration and Development, the coordination work of the Global Migration Group, the growth in IOM membership, the development of regional initiatives, through both regional organizations and regional consultative processes, and the decision to hold the high-level plenary meeting of the General

Assembly on addressing large movements of refugees and migrants in September 2016 all testify to that interest.

42. Better global migration governance would be advantageous for all States because they cannot deal with a global phenomenon on a unilateral, bilateral or even regional basis alone. Enhanced governance would allow for a better sharing of responsibilities on the part of States associated with migration. More cooperation on migration governance does not mean less territorial sovereignty.

43. While the Global Forum on Migration and Development provides a useful platform for informal discussions between States, it should not be seen as a substitute for discussions about migration at the United Nations. More frequent high-level dialogues could lead to closer linkages and synergies between discussions within the United Nations and those outside.

44. The work of the Global Forum on Migration and Development has improved to include more focus on human rights, using the expertise of the Global Migration Group and the United Nations human rights mechanisms to a greater extent and allowing for enhanced participation by civil society. It could further benefit from more concrete outcomes, for example through the adoption of a formal outcome document at each meeting and the establishment of a mechanism for follow-up and monitoring of the implementation of its recommendations. Participation by civil society organizations could be further enhanced by increasing their involvement to a full day, with their deliberations being taken up during the course of the meeting, and ensuring their participation at all round tables during days reserved for the participation of Governments.

45. The High-level Dialogue on International Migration and Development is an important opportunity to reflect on the mainstreaming of human rights into all aspects of the migration debate. States should consider holding more frequent high-level dialogues, for instance every three years, which should be interactive and action-oriented, each with a rights-based negotiated outcome document that would include a plan of action and a mechanism for follow-up and implementation monitoring.

46. Human rights must be a cross-cutting issue that informs all discussions at the High-level Dialogue, and, as outlined in the 2013 report of the Special Rapporteur (see A/68/283), States should consider raising issues such as:

(a) Decriminalization of irregular entry and stay;

(b) Development and implementation of rights-based alternatives to detention, especially for children and families with children;

(c) Awareness-raising of the human rights of migrants;

(d) The fight against xenophobia, discrimination and violence against migrants, in acts and speech;

(e) Refraining from referring to migrants as "illegal" regardless of their migration status;

(f) Effective protection of the human rights of vulnerable groups, such as unaccompanied children, families with children, persons with disabilities and elderly migrants;

(g) Enjoyment of all economic, social and cultural rights, including the right to education, health, social security and adequate housing, as well as labour rights, for all migrants, including irregular migrants;

(h) Protection of the human rights of migrants at borders,[6] both at entry and during expulsion procedures;

(i) Effective access to justice for all migrants, whatever their status.

47. Regional mechanisms are becoming an important feature of the global migration governance architecture.

48. Agreements on the free movement of persons have created open mobility regimes, such as in the European Union and the Southern Common Market (MERCOSUR). However, with the recent "Brexit" vote, it is clear that migration under such regimes can create resentment and fears that can be fuelled by political discourse. With appropriately informed public debate, expanding and linking such freedom-of-movement zones should become a priority.

49. Mobility agreements between a freedom-of-movement zone and an external country are prominent in the recent European Union dialogue about its migration and border management policies, encompassing a broad range of issues, from development aid to temporary entry visa facilitation, circular migration programmes and the prevention of irregular migration, including cooperation on readmission. Transparent and effective monitoring and accountability mechanisms would enhance their legitimacy.

50. While the growing number of regional consultative processes are important trust-building exercises, they can also lead to contradictions and lack of accountability and oversight, especially when such processes trigger changes in policy and practice that affect the rights of migrants. Regional consultative processes should be developed to take in issues beyond border control, interdiction and return, including cooperation on the protection of migrants' rights and on expanded visa liberalization and facilitation, in order to develop accessible, regular, safe and affordable mobility solutions for migrants at all skill levels.

51. Regional organizations, regional consultative processes and bilateral agreements contribute usefully to global migration governance and serve as laboratories for policy initiatives. However, under a human rights-based framework, and taking into account the consequences of their decisions on the lives and rights of migrants, States have the duty to ensure that bilateral and regional arrangements are transparent, and that they respect, protect and promote human rights and ensure accountability, especially in favour of migrants.

52. A number of trade agreements contain clauses relating to the mobility of persons, although they oftentimes refer only to executives and highly skilled expatriates. Such clauses should be expanded to cover migrants at all skills levels and should be inserted in a human rights framework, which would improve their coherence. Such clauses should include rigorous due diligence, monitoring and oversight mechanisms.

[6] See OHCHR Recommended Principles and Guidelines on Human Rights at International Borders, 2014. Available from: www.ohchr.org/EN/Issues/Migration/Pages/InternationalBorders.aspx.

53. Trade agreements should reflect the human rights obligations of States, and agreements that undercut existing social protections should not be ratified. Introducing a human rights-based approach to trade, which offers migrants' representatives meaningful opportunities to comment during trade negotiations, would also acknowledge and empower migrants as key stakeholders in trade issues. The recent work of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in support of a human rights impact assessment of the Continental Free Trade Area project demonstrates the value of such impact assessments in identifying and mitigating human rights violations, while pointing out opportunities for the upgrading of skills.

54. Trade agreements can also provide for a whole-of-government approach to monitoring and enforcing the agreement's terms. Similarly, the inclusion of regulated recruitment systems and shared migration databases in trade agreements, as Viet Nam and Malaysia have done, can help coordinate mobility and ensure that low-wage workers are placed in employment that better matches both their skills and qualifications and the labour needs of employers.

55. States should not only sanction employers and others who engage in unethical behaviour, but also introduce incentive systems for improving working conditions, as are included in the trade agreement between the United States of America and Cambodia. The MERCOSUR and Ibero-American agreements have also strengthened the economic, cultural and social integration of migrants by enhancing the portability of social security and other acquired benefits.

56. Once the proper legal framework is in place, migrants will also have greater capacity to protect themselves in times of crisis and vulnerability, especially when they can directly access domestic courts and tribunals to address rights violations in the context of trade. Working with civil society, trade unions and the private sector is essential to improving human rights and labour rights protections for migrants.

3. Developing more opportunities for safe, orderly and regular migration, in line with target 10.7 of the Sustainable Development Goals, including labour mobility at all skill levels that is responsive to labour market needs, as well as family reunification and education-related migration opportunities

57. Large-scale mobility is inevitable and necessary for the growth and development of a globalized economy that demands global production and a global workforce. Businesses and employers are keen to reduce costs and maximize profits. This frequently comes at a human cost, especially for migrants in an irregular situation, who are often constrained by circumstances to perform tasks at great financial, physical or even psychological cost to themselves (see A/HRC/26/35). Thus far, the efforts of States have been ineffective when it comes to monitoring and sanctioning businesses that exploit migrants for their cheap labour, often in dirty, difficult and dangerous working conditions.

58. Globally, in sectors where regulation is inadequate, such as domestic work, care, construction, agriculture, the garment industry, food processing and packaging, fisheries, extraction and hospitality, migrants unable to get work permits arrive irregularly and are vulnerable to economic exploitation, abuse and violence. States are well aware of this fact, but can do little to reduce the levels of exploitation, and employers take advantage of the fact that migrants rarely complain, mobilize or contest, owing to their lack of status, political capital or access to justice.

59. Although some migrants, such as children, older persons, women travelling alone and migrants with disabilities, are vulnerable, the majority are not intrinsically vulnerable. On the contrary, they are most often incredibly resilient and courageous, making life-altering decisions on a regular basis. However, through policy and practice decisions that result in a lack of effective access to justice, States may create precarious conditions of legal status or regulatory frameworks that allow many to abuse and exploit migrants with impunity. For example, there are cases in which temporary migrant worker schemes do not provide for adequate oversight mechanisms; countries that rarely enforce the prohibition of recruitment fees, leading to situations of debt bondage, and rarely streamline their labour recruitment industry to ensure it effectively protects the rights of migrants; and labour inspection mechanisms that collaborate with immigration enforcement to expel undocumented migrants rather than try to enforce labour standards against the exploitative employers of such migrants.

60. Consequently, when speaking generally of migrants, the Special Rapporteur has come to use the word "precarious", which refers more to the situation they are in, constructed as it often is, rather than the word "vulnerable", which connotes more their intrinsic characteristics.

61. It is important that all States establish human rights-based, coherent and comprehensive national migration policies. These policies should address the "pull" factors for irregular migration, namely the unrecognized need for migrant labour in destination States, including for low-wage workers, and the corresponding need to open up a greater number of regular migration channels.

62. Little attention has been given to the impact of labour market dynamics in destination countries as pull factors for irregular migration. Member States should be weaned of their reliance on cheap labour in specific economic sectors and should ensure labour rights are upheld for all, including documented and undocumented migrants, through the full implementation of sanctions against employers and rigorous labour inspection. Long-term investment in the enforcement of labour standards and human rights for all workers, whatever their status, will allow States to respond to labour shortages in an efficient and regulated way, thus increasing global competitiveness and leading to less labour exploitation, less irregular migration, less migrant smuggling and less loss of life.

63. A well-organized migration policy based on mobility and human rights could also help States to enhance their development impact. In 2015, migrants sent approximately $432 billion in remittances.[7] Migrants who moved from countries with a low human development index to countries with a higher development index experienced, on average, a 15-fold increase in income, a doubling in education enrolment rates and a 16-fold reduction in child mortality.[8] If the human rights of migrants are effectively respected, protected and promoted within well-regulated migration processes, such development outcomes can be greatly enhanced.

[7] Dilip Ratha, Supriyo De, Sonia Plaza, Kirsten Schuettler, William Shaw, Hanspeter Wyss and Soonhwa Yi, "Migration and remittances: recent developments and outlook", Migration and Development Brief 26 (Washington, D.C., World Bank, 2016).

[8] United Nations Development Programme, *Human Development Report 2009: Overcoming Barriers — Human Mobility and Development*. Available from: http://hdr.undp.org/sites/default/files/reports/269/hdr_2009_en_complete.pdf.

64. The Special Rapporteur recommends that States develop and incentivize accessible, regular, safe and affordable migration channels at all skill levels and consider a variety of options for regular migration, such as humanitarian visas, temporary protection, family reunification, work permits at all skill levels, as well as for migration for job seeking, student mobility and medical evacuation. States can also increase the number of migrants admitted under existing regular migration schemes, including for seasonal workers and student visas.

65. The Special Rapporteur underlines that it is important for States to ensure inclusive processes that allow for a robust public debate, including through national consultations, and that promote a better understanding of the needs of migrants in terms of human and labour rights protection. This will allow States to develop more targeted programmes and more suitable mobility options and to measure effective progress for migrants, especially those who are socially marginalized, economically excluded and politically invisible. Such processes and data collection will constitute an important contribution to the 2030 Agenda for Sustainable Development.

4. Ensure that migration opportunities entail: the ethical recruitment of migrants; reduction in the costs of migration; facilitation of the flow of remittances, and increasing their productive use; enhancement of the transfer of skills and knowledge; mutual recognition of skills and portability of acquired benefits, as addressed in the Addis Ababa Action Agenda; and efforts by Member States to counter the exploitative practices and the demand for services derived from the exploitation of others, in line with international human rights and labour standards

66. Abuses of the rights of migrant workers are not isolated incidents taking place in a vacuum. First, unethical recruitment practices thrive in an environment in which the prices of goods and services are dependent upon a supply of cheap labour. Ethical recruiters struggle to compete within a system that has adapted to the vicious cycle of wholesale exploitation and systematic suffering.

67. Second, the systematic use of exploitative labour is becoming part of the conceptualization of economic development of both countries of origin and destination. As countries accelerate their growth and build infrastructure based on cheap labour, international migration of low-wage workers is embraced as a tool of development without due attention to the human rights of migrants themselves.

68. This can be seen, for example, in how temporary migration schemes are frequently discussed, in international forums such as the Global Forum on Migration and Development, as positive examples of flexible labour supply responding quickly to economic demands, despite countless examples of built-in structural precariousness and of negative human rights consequences.

69. Destination States accept and become complicit in this economic normalization of the exploitation of migrant workers because of a desire to remain globally competitive. Countries of origin can also fail to negotiate adequate protections for their nationals owing to power imbalances between countries. Examples have been reported of countries of origin that have requested better treatment for their nationals only to see the number of their citizens obtaining visas as migrant workers drop.

70. Consequently, migrants make a realistic assessment of the options offered to them and factor the recruitment system into their plans for migration, thus accepting negative consequences and further embedding the normalization of exploitation and suffering. Their choices are limited, as their immediate objective is sending money home to repay any debt incurred and to put bread on the family table.

71. In this respect, States must ensure that exploitative employers are sanctioned and that migrants, including those in an irregular situation, are empowered to defend their own rights through effective access to justice in national courts, tribunals and dispute-settlement mechanisms, with the assistance of unions, interpreters and legal assistance.

72. States must transition to an ethical migrant labour recruitment system based upon the Guiding Principles on Business and Human Rights and the wealth of human rights instruments, labour standards and soft law norms. This must take into account the rights and needs of migrant workers and the benefits of facilitated mobility and incentivize accessible, regular, safe and affordable labour mobility. States must also determine the regulatory environment in which employers recruit and use migrant labour. The key elements of such a transition include:

(a) Banning of recruitment fees;

(b) Effective regulation, licensing and monitoring of recruiters;

(c) Harmonization of the legal and policy frameworks relating to recruitment.

73. Voluntary compliance is not enough to protect the rights of migrants, and sustained political will is needed to ensure that Governments use their legislative, policymaking, investigative and judicial powers to protect the rights of individuals, regardless of nationality or status.

74. International and regional cooperation is essential to transition to an ethical system, as the playing field must be levelled in order to make progress. No one country alone will be able to end exploitative and abusive recruitment. Member States must develop a level playing field for all recruitment agencies, using initiatives such as the International Labour Organization (ILO) Fair Recruitment Initiative and the IOM International Recruitment Integrity System.

75. Governments should engage with the private sector. There is a strong business case for a transition to an ethical recruitment system for a number of reasons, including the consequent reduction in reputational and legal risks, and greater efficiency and productivity gains within business operations and the extended supply chain. Governments, international organizations and business associations must use this business case alongside key international legal and policy standards to engage with the private sector, raise awareness within it on the issues and determine the steps needed to achieve a wholesale transition to an ethical recruitment system.

76. In turn, the private sector must fully comply with all relevant international human rights and labour standards and fully implement the Respect, Protect and Remedy framework within the Guiding Principles on Business and Human Rights in relation to migrant workers, by, inter alia, developing a zero-tolerance policy on the payment of recruitment fees by workers, auditing supply chains and ensuring human rights due diligence with all contractors and subcontractors.

77. Empowering migrants through information and support can harness their resourcefulness to drive progress towards a system of fair and ethical recruitment. Migrants must understand their rights and be empowered to make decisions about recruiters based upon robust intelligence about different actors in the market. Recognizing migrants as rights holders, acknowledging the benefits that they bring to destination countries and facilitating their integration into society is key to instituting a system of fair recruitment for international labour migration. Failing to recognize the huge value of migrant workers and to support their integration legitimizes abuse and exploitation.

78. The alliance of migrants' resourcefulness, the business community's desire for a level playing field and the political will of Governments should result in egregious recruitment practices becoming mostly a thing of the past.

5. Ensure the inclusion in the global compact of migrants and their specific vulnerabilities and needs, in coordinated humanitarian response and development frameworks at all levels, by ensuring the rights of migrants are upheld, the financial and human resources necessary to support such efforts are mobilized and development funding is expanded for measures to support the positive contribution of migrants to the societies in which they reside

79. In a number of human rights conventions, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, it is recognized that everyone has the right to an effective remedy from the competent national tribunals for acts violating the fundamental rights granted to him or her. Despite these international protections, many migrants face serious barriers in accessing remedies when their human rights are violated.

80. Systemic barriers to access to justice can compound abuses of migrants' rights, including through: a lack of local language skills; limited information about rights and means of redress; lack of unionization or representation; geographical constraints; restrictions of migrants' freedom of movement; fear among migrants of retaliation or economic loss if they make complaints against abusive recruiters, employers or landlords; long processing times for complaints; a general practice by recruiters or employers of deliberately not providing migrants with documents that could prove exploitation; the fragmentation of enforcement power for different rights across various judicial and non-judicial mechanisms; the growth of non-judicial remedies; a lack of access to a competent lawyer; and a lack of legal aid.

81. Significant resource constraints contribute to the unwillingness of States to prioritize and invest in facilitating access to justice for migrants, such as legal aid and translation and interpretation services. Migrants' fear of detection, detention and deportation if they assert their right to access justice is also a key barrier. Additionally, inconsistencies in access to justice persist, depending upon the rights at stake, the type and nationality of the migrants and the jurisdiction. Finally, a lack of specific rules on the duty of courts to apply sanctions and/or compensation for violations of migrants' human rights or labour rights is another significant barrier.

82. The Special Rapporteur notes a promising trend in relation to access to justice, as national and regional jurisdictions appear willing to support migrants fighting for their rights in cases when migrants have been able to overcome all the hurdles put in

their way and bring their cases before a court of justice. States must remove barriers to access to justice, ensuring that migrants can effectively — and not simply on paper — access legal remedies for violations of their rights. Facilitating access to justice without fear of detection, detention or deportation would go a long way towards, on the one hand, legitimizing new migration policies by showing that territorial sovereignty and human rights are not incompatible, and, on the other, changing mentalities regarding migration through fighting stereotypes. When migrants actually go to court, courts often listen, and when courts say migrants have rights, citizens often listen. Conversely, States must ensure that labour inspections target exploitative employers rather than exploited migrant workers.

83. States should also implement "firewalls" between immigration enforcement and public services, thereby allowing for access to justice, housing, health care, education, social and labour services for all migrants, whatever their status, without fear of detection, detention and deportation, as recently recommended by the Council of Europe.[9]

84. States must also ensure that all migrant workers, irrespective of their skill level, job sector or administrative status, are protected by labour standards, and should facilitate the unionization of all migrant workers, regardless of status, in order to ensure their effective empowerment to defend their own rights.

85. Furthermore, States must improve accountability for violations of the rights of migrants, including by strengthening the capacity of national human rights institutions and ombudspersons.

86. Improving disaggregated data collection and indicators in all areas relevant to migration while ensuring data protection will allow for States to make better-informed policy decisions.

87. The Special Rapporteur is concerned about the extensive use of detention as a border management and deterrence tool against migrants, as it is too often also used to prevent migrants' access to justice.

88. The Special Rapporteur stresses that, upon arrival, all irregular migrants should have proper individual assessments carried out for all their human rights protection needs, and not only for those who are manifestly refugees and victims of trafficking: children, families with children, pregnant women, persons with disabilities or illnesses and elderly migrants also have need of protection. Quick screening processes should not increase the risk of refoulement for those needing protection.

89. After making what are often extremely long, dangerous and arduous journeys, many irregular migrants and asylum seekers are uselessly subjected to immigration detention. Immigration detention can be in contravention of international human rights law. Freedom should be the default position and detention must be reasonable, necessary, proportionate and decided on a case-by-case basis. As irregular migration is not a criminal act, detention based simply on the lack of

[9] European Commission against Racism and Intolerance, General Policy Recommendation No. 16, *On Safeguarding Irregularly Present Migrants from Discrimination*, adopted 16 March 2016. Available from: www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N16/REC-16-2016-016-ENG.pdf.

administrative status is illegal.[10] Administrative detention can only be justified if an individual presents a danger to the public or risks absconding when their presence is necessary in further proceedings. Such determinations must be done individually and be based on some kind of evidence. Any detention that does not respect such parameters is illegal. Furthermore, when detention becomes a routine measure of border enforcement, it may be, per se, arbitrary insofar as it is neither an exceptional measure of last resort, nor based upon a meaningful, individualized assessment of risk.

90. Additionally, there are human rights concerns relating to the impact of detention. Prolonged detention without a legal basis has been shown to have a devastating effect on the physical and mental health of migrants and asylum seekers, for example by contributing to post-traumatic stress disorder, anxiety and depression. This is frequently compounded by unacceptable conditions of detention, such as overcrowding, unsanitary toilet and shower facilities and unhygienic kitchens, as well as by scarce access to health care, family members, lawyers, international or civil society organizations, or physical and recreational activities.

91. Long periods of immigration detention can also lead to serious delays for migrants in claiming their economic and social rights, even after having been released. Research by the Office of the United Nations High Commissioner for Refugees (UNHCR) suggests that detention disempowers migrants, who are often keen to work, owing to a sustained absence from the labour market and the emotional and mental toll of detention.

92. Of particular concern is the frequent presence of children in detention. Children are usually afforded additional protections by States and, according to many national policies, should not be detained. However, the Special Rapporteur has witnessed detained children in all the countries he has visited, some of which have absurdly justified such detention by calling it protective custody.

93. When the age of the child is unknown, which is common when they are undocumented or coming from countries without robust birth registration systems, they are often detained until their age can be verified, which can take weeks or months. In some instances, while in detention, unaccompanied children live and sleep alongside adults, without any special accommodation made for their young age and without access to education. In others, families are separated in different sections of the detention facility according to age and gender.

94. The detention of children, even for short periods, can have severe psychological consequences. It has been made clear by the Committee on the Rights of the Child and reinforced by other human rights mechanisms that immigration detention can never, ever, be in the best interest of a child and that the immigration detention of children, whether unaccompanied or together with their families, constitutes a violation of child rights. Consequently, both unaccompanied children and families with children should always benefit from alternatives to detention.

[10] CMW/C/GC/2, para. 2; Inter-American Court of Human Rights, *Vélez Loor v. Panama*, para. 171; Inter-American Court of Human Rights, *Pacheco Tineo v. Bolivia*, para. 131; and Court of Justice of the European Union, *Sélina Affum v. Préfet du Pas-de-Calais*.

95. Many rights-based alternatives to detention exist.[11] A number of countries have moved towards open reception facilities, particularly for vulnerable migrants such as unaccompanied minors and families. However, prolonged immigration detention and its associated negative human rights consequences continue in many countries.

6. The responsibility of States to protect and assist their citizens abroad, including by ensuring proper documentation for their protection and their right to re-entry, as contemplated in the Vienna Convention on Consular Relations, and establishing bilateral and regional consular cooperation arrangements, where needed

96. Consulates can add to the difficulties faced by their nationals, as they may show reluctance to support their efforts in pursuing judicial remedies so as not to affect their competitiveness in the international labour recruitment market. Consular support should always be available to migrants in countries of destination[12] so that they are able to access information and assistance on alternatives to exploitative situations and on access to justice and social protection services (see A/70/310).

97. Countries of origin should provide prospective migrants with information on regular migration channels, the risks associated with irregular migration and the recourse available to them in cases of abuse and exploitation. Pre-departure and post-arrival training should be seen as part of an entire curriculum of education developed cooperatively by countries of origin and destination. The Special Rapporteur is aware of countries such as the Philippines that offer and provide such support to their nationals.

98. Consular staffing should be strengthened within missions in countries of destination in order to: allow them to increase the scope of their work, give more attention to combatting the practices of unscrupulous recruiters, respond more effectively in order to protect and promote the rights of migrants and members of their families, where necessary, and provide, in particular, the necessary assistance to any migrants deprived of liberty or subjected to an expulsion order.

7. Stressing, in the global compact, that the return of migrants who do not meet the required international or national legal standards to remain in their host country must be conducted in safety, dignity and respect for human rights, on the basis of: (a) the primacy of voluntary returns; (b) cooperation between States of origin and reception; and (c) enhanced reception and reintegration assistance to those who are returned

99. The Special Rapporteur noted, in recent international conversations, an increased focus on the return of migrants not benefiting from refugee protection. Certainly, refugees need protection in accordance with the 1951 Convention relating to the Status of Refugees. However, all migrants need the protection of their rights in accordance with international human rights law and international labour law, in particular in cases of detention, physical or mental abuse, labour exploitation, forced labour, return to torture, sexual and gender-based violence, separation of families, privacy and the protection of children.

[11] R. Sampson, V. Chew, G. Mitchell and L. Bowring, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*, revised ed. (Melbourne, International Detention Coalition, 2015).

[12] United Nations, *Treaty Series*, vol. 2220, No. 39481; CMW/C/GC/2.

100. The international human rights and labour law regimes protect everyone, including refugees. In some cases, refugees are better protected under the human rights regime than under the refugee regime. The right to education enshrined in the Convention on the Rights of the Child and the absolute prohibition of a return to torture enshrined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which also contains the principle of non-refoulement, are cases in point. The tools needed to protect all such rights are often similar, whether the foreigner in question is a refugee or another kind of migrant, and consist of access to justice; adequate national human rights institutions and ombudspersons; access to lawyers and legal aid mechanisms; detention-monitoring mechanisms; and oversight mechanisms for cases of repressive administrative action, for example in airports, ports, detention centres or police custody.

101. Upon arriving undocumented in countries of transit or destination, all migrants and refugees fall within the category of irregular migrants and are often treated as such. Proper individual assessments for all are required in order to effectively identify their vulnerabilities and the legal framework under which their need for protection will fall.

102. Readmission agreements are an area of particular concern. Despite protections against such practices in legislation, push-backs and refoulement to countries of origin and third countries with a weak rule of law and poor asylum systems have been improperly conducted under the broad auspices of bilateral agreements.

103. The Special Rapporteur stresses that no one should be returned under a readmission agreement without effective oversight by a post-return human rights monitoring mechanism that ensures that the human rights of returnees are actually respected.

104. Special procedures and safeguards must be established for the return of unaccompanied or separated children. States should only return or repatriate unaccompanied children as a measure of protection — for instance, to ensure family reunification in cases in which it is in the child's best interest and after due process of law. Decisions on the return of unaccompanied children should be taken by child protection officers or — only in cases in which that is not possible — well-trained migration officials who understand children's rights and needs.

8. To initiate a State-led, consultative process to improve protection and assistance for migrants in vulnerable situations, with the participation of experts and civil society, building on the principles and practical guidance on the protection of migrants in large movements currently being developed by the Global Migration Group

105. As demonstrated throughout the tenure of his mandate, the Special Rapporteur believes in the importance of a State-led, consultative process and proposes, including relevant United Nations agencies, United Nations and regional human rights mechanisms, civil society organizations and migrant communities in that process.

106. The Special Rapporteur also takes note of the principles and practical guidance on the human rights protection of migrants in precarious situations within large and/or mixed movements established by the Global Migration Group's working group on human rights and gender equality, in partnership with agencies of the United Nations system, civil society, academia and States, which are intended to

address human rights protection gaps for migrants. The guidance could form an important part of the global compact, as it is derived from existing obligations under international law and seeks to assist States and other stakeholders with regard to the development, strengthening, implementation and monitoring of measures to protect migrants in vulnerable situations and in large and/or mixed movements. As demonstrated herein, the Special Rapporteur has contributed to this effort, and believes in the importance of such a consultative process and guidance to assist States and other stakeholders in the implementation of their human rights obligations in devising rights-based responses to large-scale, irregular and precarious movements.

9. Giving favourable consideration to incorporating into national policies and practices the insights of the State-led Migrants in Countries in Crisis Initiative to protect and assist migrants in countries experiencing conflicts or natural disasters and of the Nansen Initiative in its agenda for the protection of persons crossing international borders as a result of natural disasters and climate change, and continuing to develop such initiatives

107. The Special Rapporteur supports such initiatives and notes that a broader framework based on human rights for all migrants is required to encompass these initiatives so as to guarantee a more holistic approach.

10. Forging a closer relationship between the United Nations and the International Organization for Migration, including through a strengthened legal relationship

108. The recent unprecedented numbers of irregular migrants seeking safety and security serve to underline the fact that, despite the existence of legal frameworks on migration issues, a comprehensive framework for migration governance is still lacking. Given that migration is a natural human phenomenon unlikely to end in the foreseeable future, and as stated in the Special Rapporteur's 2013 report to the General Assembly on global migration governance (see A/68/283), the United Nations must be involved to a greater extent in the debate on global migration governance, ensuring that proper attention is given to the human rights of migrants.

109. Owing to the lack of a comprehensive framework, global migration governance is fragmented with different institutional approaches and normative frameworks relating to specific aspects of migration, such as the human rights of migrants, the smuggling of migrants, refugees and asylum seekers and labour migration.

110. The Special Rapporteur observes that the reluctance of States to strengthen migration governance seems to be based on the misconception that this will limit their sovereignty. States have the power to determine who enters and stays in their territory. More governance does not mean giving up this sovereignty. On the contrary, States would have more control if there were more migration governance. More governance simply means improving the coordination and cooperation between States, leading to better governance over migration that would better respect human rights, thus further protecting States from allegations of human rights abuses against migrants.

111. As the scope and complexities of migration continue to grow, the alternative to more robust global migration governance is a highly unregulated system, with a range of uncoordinated actors, including from the private sector. In reality, State sovereignty is more challenged by insufficient global migration governance, which facilitates the role of other actors, such as exploitative migrant smugglers and

employers, who are currently providing migrants with mobility solutions regardless of State policies.

112. Migration is multidimensional and it is often conceptualized together with other aspects of globalization. However, those who are most affected by migration are the migrants themselves, who are human beings with inalienable human rights, which States have committed to respect in the Universal Declaration of Human Rights and the human rights treaties and international labour conventions to which they are parties. Thus, migration cannot be conceptualized without human rights, and any framework for migration governance must duly take into account the human rights of migrants.

113. Any future model for global migration governance should encompass several functions, including: standard-setting and normative oversight; capacity-building and technical assistance; a platform for dialogue, collaboration and political facilitation; and the development of a knowledge base or capacity through data, indicators and dissemination. These functions are currently carried out by a wide range of actors, both inside and outside the United Nations framework.

Integrating the International Organization for Migration into the United Nations, with a revised mandate

114. IOM already works very closely with the United Nations, including as a member of the Global Migration Group, and in many countries IOM is part of United Nations country teams. Integrating IOM into the United Nations would thus allow the United Nations to benefit from its vast experience and expertise.

115. However, the IOM Constitution does not include a protection mandate. In order for IOM to be properly integrated into the United Nations, its Constitution should be revised. IOM should be given an official human rights protection function, and the United Nations human rights framework should be referred to in its Constitution. This would allow IOM to measure its policies and practices against a clear, binding normative framework and ensure that all projects funded by States and implemented by IOM are negotiated in respect of that framework.

116. As human rights are at the core of migrants' social, economic and legal condition, IOM cannot become the leading international organization on migration unless it has a clearly defined legal human rights protection framework against which to measure the legitimacy of its policies and practices. The argument put forward by many, according to which IOM would work with States on migration policies while the United Nations would address the human rights of migrants, makes little sense from a human rights perspective: mainstreaming human rights into migration policies is the only way to achieve the desired result of ensuring that the human rights of migrants are actually respected, protected and promoted by all.

117. In his 2013 report, the Special Rapporteur recommended that this constitutional change be operationalized as IOM becomes integrated into the United Nations. He notes that an agreement between States appears to have been reached for such integration without this specific constitutional change, and therefore now proposes that the issue of the updating of the IOM Constitution be included in the agenda for the 2018 follow-up United Nations conference on migration.

118. In addition, the IOM human rights framework and independence would be reinforced if predictable core funding were made available. Currently, more than 98 per cent of IOM funding is in the form of voluntary contributions for earmarked projects. Therefore, donor States have an important role in determining the

organization's work and priorities. Core funding would allow IOM to initiate projects according to its own priorities, rather than mostly implementing donor-driven undertakings.

119. Furthermore, the integration of IOM into the United Nations system must include a deepening of the cooperation between IOM and all other relevant United Nations entities and agencies working on migration, in particular those that have a defined protection mandate, such as OHCHR, UNHCR, ILO, the United Nations Office on Drugs and Crime (UNODC), the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF). IOM must also develop very clear mechanisms for collaboration and coordination with civil society.

120. The idea of requesting IOM to support the ratification and implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should also be discussed. The Convention, which has garnered few ratifications, would benefit from an institutional champion able to muster adhesion to its principles. Such a responsibility would contribute to strengthening the human rights culture within IOM and provide it with an appropriate normative tool to measure its action and to negotiate projects with States. IOM would thus complement the important work of the Committee on Migrant Workers, in the same way that UNICEF and the Committee on the Rights of the Child complement each other's work on the implementation of the Convention on the Rights of the Child.

IV. Conclusions and recommendations

121. **The events in the Andaman Sea, the Asia-Pacific region, Central America, the Mediterranean Sea and the Middle East, as well as the mirroring of such suffering at each stage of the migratory process over the past three few years, have clearly shown that the status quo in approaches of States to border control, asylum and migration is not sustainable if the objective is to reduce suffering and deaths.**

122. **The commitments of States to regional and international human rights systems and other normative standards clearly show that they have the potential to collectively initiate and develop a global leadership role on the issue of migration policies and practices, a role which remains vacant at present.**

123. **The global compact should:**

(a) **Recognize the need for a stronger human rights-based normative and institutional framework for migration at the United Nations, which will, in turn, have a positive effect on informal migration governance outside of the United Nations;**

(b) **Outline clear short-, medium- and long-term goals that articulate a shared vision for the global compact on how to facilitate migration and mobility, as requested in the 2030 Agenda for Sustainable Development. Such goals must be developed in full recognition of the push and pull factors of irregular migration and responsibilities of States for managing and mitigating them;**

(c) Assist States in developing strong and effective labour law frameworks (including on labour inspection, unionization and collective bargaining) protecting the rights of all workers, including migrant workers, regardless of status, and in ensuring effective access to justice for migrants whose labour rights or human rights have been violated;

(d) Ensure that States adopt measures to facilitate accessible, regular, safe and affordable migration and mobility channels at all skill levels, as well as family reunification and the regularization of undocumented migrants;

(e) Support the strategies of States, through fact-based analysis and long-term strategic thinking, to counter the conceptualizations of migration that underpin toxic public debates and counterproductive and ineffective security policies and needlessly result in the stigmatization, marginalization and criminalization of migrants, and integrate such analysis in developing means of public communication and elements of education curriculum in favour of migration, mobility and diversity;

(f) Integrate IOM into the United Nations system, with a process leading to the updating of its Constitution in order to include in it a strong human rights protection mandate in favour of migrants, including the provision of an adequate level of core funding that allows IOM to take significant and forward-looking initiatives in terms of migration policies and practices, and to not be merely project-driven;

(g) Ensure, in all discussions relating to migration policies and practices, the participation of key United Nations agencies already working on migration issues, including OHCHR, ILO, UNHCR, UN-Women, UNODC, UNICEF and WHO, as well as United Nations human rights mechanisms, experts and civil society organizations;

(h) Ensure that States collect disaggregated data, on the basis of data gaps, in order to develop meaningful, evidence-based policies while ensuring data protection through the establishment of firewalls, and support the increased harmonization and coordination of migration data sources, collection and analysis in order to develop a systemic picture;

(i) Ensure a robust gender analysis of the difference in the impacts of policies on men and women, with special attention to the ways in which restrictions on women's mobility as a means of protection violate their rights and create favourable conditions for smuggling networks to thrive, including the use of a gender lens at all stages and in all aspects of the discussion as specific consideration of gender in the context of bilateral agreements, detention/deportation and readmission/repatriation is also crucial;

(j) Ensure that the detention of migrants is always a measure of last resort, permissible only when reasonable, necessary and proportionate, decided on a case-by-case basis, and enforced for the shortest possible period of time; develop rights-based alternatives to detention for most cases; and ensure that migrant children and families with children are never, ever, detained for reasons relating to their administrative immigration status.